

EXHIBIT 5

Commissioner Anthony J. Albence
905 S. Governors Ave Ste 170
Dover DE 19904

Sent via email

September 16, 2022

Re: Eligible Voters in Delaware Prison Facilities

Commissioner Albence:



100 W. 10th Street, Suite 706
Wilmington, DE, 19801
302-654-5326
www.aclu-de.org

Kathleen Epler
President

Mike Brickner
Executive Director

Dwayne J. Bensing
Legal Director

The ACLU of Delaware is gravely concerned about the constitutional and statutory interests of eligible voters held in Delaware Department of Corrections (“DDOC”) custody. In light of the September 14, 2022 ruling in the Court of Chancery of the State of Delaware finding the Vote By Mail law to be unconstitutional and finding the Delaware Constitution’s enumerated circumstances allowing for absentee voting are exhaustive, pretrial detainees and people convicted of misdemeanor offenses held in DDOC facilities—who are otherwise eligible voters—will now be disenfranchised. Please accept this letter as a formal demand that the Delaware Department of Elections (“DDOE”) provide reasonable assurances that eligible voters in DDOC custody are provided an opportunity to register to vote and allowed to vote in a voting booth with a voting machine provided to them by the DDOE in any DDOC facility that holds eligible voters.

As you know, on September 14, 2022 the Chancery Court announced its ruling striking down vote by mail and reiterating the limited list of people who can request absentee ballots. This list does not include individuals who are incarcerated.

The current state of affairs leaves eligible voters in DDOC custody completely disenfranchised—they can neither vote by mail nor in-person. This is a plain violation of these voters’ constitutional right to vote. Eligible voters held in DDOC custody currently have no viable option to vote unless the DDOE coordinates with the DDOC to provide a voting booth with a voting machine staffed by DDOE at every location



where eligible voters are being detained by DDOC. Since the Chancery Court ruling kept same day registration intact, detainees can register to vote and vote in one fall swoop on election day or during any of the ten early voting days allowed under Delaware law prior to the General Election. With less than two months remaining for eligible voters to register to vote and vote in the November 8, 2022 General Election, this is a matter of urgent concern.

We request that, by no later than Tuesday, September 20, 2022, DDOE provide reasonable assurances that eligible voters will be provided an opportunity to register to vote and vote in the 2022 General Election concluding on November 8, 2022, as demonstrated by providing the opportunity for eligible voters detained in DDOC custody to register to vote via same day voting or otherwise, and to vote in the November 8, 2022 General Election by providing a voting booth and voting machine staffed by DDOE at every location where eligible voters are being detained by DDOC .

While failure to provide these requested assurances may result in further legal advocacy, we remain committed to working with the DDOE in ensuring that eligible voters in DDOC custody are provided with an opportunity to participate in elections. We sincerely hope that the DDOE will take these concerns seriously and work diligently to ensure compliance with the law.

Please do not hesitate to contact me to discuss this matter. We look forward to your response.

/s/ Dwayne J. Bensing
Dwayne J. Bensing
Legal Director
American Civil Liberties Union of
Delaware
(302) 295-2113
dbensing@aclu-de.org

cc: Frank Broujos; Monroe Hudson, Jr.; Gregory E Smith; Heather Zwickert; Sen. Marie Pinkney; Rep. Eric Morrison; Sen. Kyle Evans Gay; Jon Sheehan; Karen E. Keller